

MT LEGISLATIVE HISTORY

Chapter 409 19 82

Bill (H) 803 S. _____

Original bill & hist. ☒ C

H. Committee on Business & Labor

S. Committee on Business & Industry

Hearing Date(s) Feb 19 ☒ C

Hearing Date(s) Mar 09 ☒ C

_____ ☐ C

Mar 10 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

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Date Out Feb 19 ☒ C

Mar 10 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HB 802 INTRODUCED BY RAPP-SVRCEK, ET AL.
REVISE PROCESSING PROCEDURE FOR WORKERS'
COMPENSATION PLAN NO. 3

2/17 INTRODUCED
2/17 REFERRED TO BUSINESS & LABOR
2/17 FISCAL NOTE REQUESTED
2/19 HEARING
2/19 TABLED IN COMMITTEE
2/24 FISCAL NOTE RECEIVED

HB 803 INTRODUCED BY CAMPBELL, ET AL.
REVISE INSURANCE AGENTS LICENSING LAWS
BY REQUEST OF STATE AUDITOR

2/17 INTRODUCED
2/17 REFERRED TO BUSINESS & LABOR
2/19 HEARING
2/19 COMMITTEE REPORT--BILL PASSED AS AMENDED
STATEMENT OF INTENT ADOPTED
2/21 2ND READING PASSED 86 3
STATEMENT OF INTENT STRICKEN
2/24 3RD READING PASSED 97 2

TRANSMITTED TO SENATE
3/02 REFERRED TO BUSINESS & INDUSTRY
3/09 HEARING
3/13 COMMITTEE REPORT--BILL CONCURRED
3/13 STATEMENT OF INTENT ADOPTED
3/18 2ND READING CONCURRED 50 0
3/20 3RD READING CONCURRED 49 0

RETURNED TO HOUSE
3/25 2ND READING STATEMENT OF INTENT
CONCURRED 95 0
3/26 3RD READING STATEMENT OF INTENT
CONCURRED 92 0
4/02 SIGNED BY SPEAKER
4/02 SIGNED BY PRESIDENT

4/03 TRANSMITTED TO GOVERNOR
4/07 SIGNED BY GOVERNOR
CHAPTER NUMBER 409 EFFECTIVE DATE: 10/01/8

HB 804 INTRODUCED BY JENKINS
LIMIT PREFERENCE RIGHT FOR LEASE OF STATE
AGRICULTURAL OR GRAZING LANDS

2/17 INTRODUCED
2/17 REFERRED TO AGRICULTURE, LIVESTOCK &
IRRIGATION
2/20 HEARING
2/21 HEARING
2/21 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/24 2ND READING PASSED AS AMENDED 86 1
2/24 3RD READING PASSED 91

TRANSMITTED TO SENATE
3/02 REFERRED TO AGRICULTURE, LIVESTOCK &
IRRIGATION
3/11 HEARING
3/17 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/20 2ND READING CONCURRED AS AMENDED 49

HOUSE BILL NO. 803

INTRODUCED BY CAMPBELL, THAYER
BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

FEBRUARY 17, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
FEBRUARY 19, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
FEBRUARY 20, 1987	PRINTING REPORT.
FEBRUARY 21, 1987	SECOND READING, DO PASS. STATEMENT OF INTENT STRICKEN.
FEBRUARY 23, 1987	ENGROSSING REPORT.
FEBRUARY 24, 1987	THIRD READING, PASSED. AYES, 97; NOES, 2. TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
MARCH 13, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
MARCH 18, 1987	SECOND READING, CONCURRED IN.
MARCH 20, 1987	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0. RETURNED TO HOUSE WITH STATEMENT OF INTENT.

IN THE HOUSE

MARCH 25, 1987

RECEIVED FROM SENATE.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

MARCH 26, 1987

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1 House BILL NO. 803
 2 INTRODUCED BY Campbell, Steve
 3 BY REQUEST OF THE STATE AUDITOR
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS RELATING TO THE LICENSING AND REGULATION OF INSURANCE
 7 AGENTS, SOLICITORS, ADJUSTERS, CONSULTANTS, AND
 8 ADMINISTRATORS; AMENDING SECTIONS 33-17-102, 33-17-201,
 9 33-17-202, 33-17-204, 33-17-211 THROUGH 33-17-213,
 10 33-17-231, 33-17-401, 33-17-601, 33-17-602, 33-17-1001,
 11 33-17-1002, 33-17-1004, AND 33-17-1101 THROUGH 33-17-1104,
 12 MCA; REPEALING SECTIONS 33-17-203 AND 33-17-605, MCA; AND
 13 PROVIDING AN APPLICABILITY DATE."
 14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 33-17-102, MCA, is amended to read:

17 "33-17-102. Definitions. As used in this title, the
 18 following definitions apply:

19 (1) ~~(a)~~ An "adjuster" is a person who, on behalf of
 20 the insurer, for compensation as an independent contractor
 21 or as the employee of such an independent contractor or for
 22 fee or commission investigates and negotiates settlement of
 23 claims arising under insurance contracts or otherwise acts
 24 on behalf of the insurer. The term does not include a:

25 ~~(b)~~(a) A licensed attorney ~~at-law~~ who is qualified to

1 practice law in this state; or

2 (b) a salaried employee of an insurer or of a managing
 3 general agent, or a licensed agent who adjusts or assists in
 4 adjustment of losses arising under policies issued by the
 5 insurer ~~represented--by--such--agent-is-not-deemed-to-be-an~~
 6 ~~adjuster-for-the-purposes-of-this-chapter.~~

7 ~~(c)~~(2) A "public adjuster" is an adjuster employed by
 8 and representing the interests of the insured. The
 9 commissioner may adopt rules providing for the examination,
 10 licensure, bonding, and regulation of public adjusters.

11 ~~(2)~~(3) An "agent" is an individual, firm partnership,
 12 or corporation appointed by an insurer to solicit
 13 applications for insurance or annuities or to negotiate
 14 insurance on its behalf and, if authorized to do so by the
 15 insurer, to effectuate and countersign insurance contracts.

16 ~~(3)--"life-insurance-agent"--includes-also-an-agent-of-a~~
 17 ~~life-insurer-who-is-or-proposes-to-be--licensed--as--to--the~~
 18 ~~same--insurer--for--disability-insurance-in-addition-to-life~~
 19 ~~insurance-and-annuities.~~

20 (4) A "consultant" is a person who for a fee examines,
 21 appraises, reviews, or evaluates an insurance policy,
 22 annuity, or pension contract, plan, or program or who makes
 23 recommendations or gives advice on an insurance policy,
 24 annuity, or pension contract, plan, or program.

25 ~~(4)~~(5) A "solicitor" is an individual appointed and

1 authorized by an agent to solicit applications for
2 insurance, other than life insurance or disability
3 insurance, as a representative of such agent, and to collect
4 premiums thereon when expressly so authorized by the agent.

5 ~~(5)~~ (5) A "managing general agent" is an individual,
6 ~~firm partnership~~, or corporation appointed as an independent
7 contractor by one or more insurers for the principal purpose
8 of exercising general supervision over the business of the
9 insurer in this state, including the authority to appoint
10 agents for such insurers and to terminate such
11 appointments."

12 Section 2. Section 33-17-201, MCA, is amended to read:

13 "33-17-201. (Temporary) License required of agents,
14 managing general agents, and solicitors -- forms. (1) No
15 person shall in this state act as or hold himself out to be
16 an agent or solicitor as to subjects of insurance located,
17 resident, or to be performed in this state unless then
18 licensed as such agent or solicitor under this chapter.

19 (2) No person may act or hold himself out in this
20 state to be a managing general agent unless licensed as an
21 insurance agent under this chapter and appointed by the
22 insurers represented.

23 (3) No agent or solicitor shall solicit or take
24 application for, procure, or place for others any kind of
25 insurance as to which he is not then licensed.

1 (4) No agent shall place any business, other than
2 coverage of his own risks, with any insurer as to which he
3 does not then hold an a validated appointment or license as
4 agent under this chapter, except as provided in 33-17-1104
5 as to life or disability insurance agents and in 33-8-213.

6 (5) The commissioner ~~shall~~ may prescribe ~~and--furnish~~
7 forms by rule and make available the forms required in
8 connection with application for, issuance, continuation, or
9 termination of licenses and appointments.

10 (6) Unless licensed as a life insurance agent as
11 required by this section, no person shall in this state
12 solicit life insurance or annuities or procure applications
13 therefor or engage or hold himself out as engaging in the
14 business of analyzing or abstracting life insurance policies
15 or annuities or of counseling or advising or giving
16 opinions, other than as a licensed attorney ~~at-law~~, relative
17 to such insurance or annuities for fee, commission, or other
18 compensation, other than as a salaried bona fide full-time
19 employee so counseling and advising his employer relative to
20 the insurance interests of the employer and of the
21 subsidiaries or business affiliates of the employer or with
22 respect to the insurance interests of employees of such
23 employer, subsidiaries, or affiliates under group insurance
24 or similar insurance plans arranged by the employer or
25 employers of such employees. {Terminates July 1, 1989--sec.

22, Ch. 11, Sp. L. March 1986.)

33-17-201. (Effective July 1, 1989) License required of agents, managing general agents, and solicitors -- forms.

(1) No person shall in this state act as or hold himself out to be an agent or solicitor as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold an a validated appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents.

(5) The commissioner ~~shall~~ may prescribe ~~and--furnish~~ forms by rule and make available the forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state

solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney ~~at-law~~, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees."

Section 3. Section 33-17-202, MCA, is amended to read:

"33-17-202. General qualifications of ~~resident~~ agents and solicitors ~~other-than-life-insurance-agents~~. (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any ~~resident~~ agent or solicitor license as to insurance ~~other-than-life or-disability~~, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) must be 18 years of age or more;

(b) must be a resident in and of this state or of another state if by reciprocal arrangements made by the

commissioner with the other state similar privileges therein
are granted to residents of this state;

(c) ~~if for a resident agent's license;~~ must have been appointed as agent by an authorized insurer, subject to issuance of the license;

(d) if for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation;

(e) must be competent, trustworthy, and of good reputation;

(f) must have had experience or training or be otherwise qualified in the kind or kinds of insurance as to which he is to be licensed and be reasonably familiar with the provisions of this code which govern his operations as an insurance agent or solicitor;

(g) must pass ~~any--written~~ an examination for the license required under this chapter;

~~{h}--must-intend-in-good-faith-to-act-as-and--must--act~~
~~as--and--hold-himself-out-to-be-an-agent-or-solicitor-in-the~~
~~active-solicitation-and-negotiation-of--insurance--with--the~~
~~general--public--and--not--seek--or--use-the-license-for-the~~
~~negotiation-or-effectuation-of-insurance-on-his-own-property~~
~~or-interests-or-those-of-his-relatives-or-of--his--employer,~~
~~if-during-any-calendar-year-more-than-35%-of-the-commissions~~

~~earned-or-prospectively-to-be-earned-by-such-an-applicant-or~~
~~licensee---have---been---or---probably---will---be---derived---from~~
~~insurance-of-his-own-property-or-interests-and-those-of--his~~
~~relatives-and-of-his-employer,--the-license-will-be-deemed-to~~
~~have---been-used-or-to-be-intended-to-be-used-in-violation-of~~
~~this-subsection-{h};~~

(h) if for an agent's license as to life or disability
insurance, must not be a funeral director, undertaker, or
mortician operating in this or any other state or an
officer, employee, or representative thereof or hold an
interest in or benefit from such a business in this or any
other state.

(2) In determining the qualifications as to competence, training, experience, and knowledge of the provisions of this code governing his operations as a ~~resident-insurance~~ an agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests, and risks of farmers, the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as such a licensee."

Section 4. Section 33-17-204, MCA, is amended to read:

"33-17-204. Licensing of organizations -- requisites.

(1) A partnership or corporation may engaged in this state in soliciting or negotiating insurance policies must be licensed as an insurance agent. Each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation, personally engaged in this state on behalf of the corporation in soliciting or negotiating insurance policies, shall be registered licensed with the commissioner in conjunction with the partnership or corporation license and shall qualify as an individual. ~~An additional~~ A license fee shall be paid for each individual registered licensed in conjunction with the partnership or corporation license.

(2) A license shall not be issued to a partnership or corporation unless the transaction of business under the license is within the purposes stated in the partnership agreement or the articles of incorporation.

(3) The partnership or corporate licensee shall promptly notify the commissioner of each change relative to the individuals designated in the license.

(4) The commissioner may not issue a license to a partnership or corporation unless the secretary of state has issued a valid certificate to the partnership under 35-12-601 or to the corporation under 35-1-203 or 35-2-203.

Section 5. Section 33-17-211, MCA, is amended to read:

"33-17-211. Application for license. (1) Application

for an agent or solicitor license must be made to the commissioner by the applicant and be signed and sworn to by the applicant before a notary public ~~or--other--person authorized-by-law-to-take-acknowledgments-of-deeds.~~

(2) The commissioner ~~must~~ may designate ~~and-prepare~~ the forms for application for license, which must require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, ~~purpose-for-which-the-license-is-to--be--used,~~ and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) If for an agent's license, the application must state the kinds of insurance proposed to be transacted and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) If for a solicitor's license, the application must be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

(5) If the applicant for an agent license is a firm partnership or corporation, the application shall show, in addition, the names of all members, officers, and directors

and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm partnership or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to 33-17-205, the application must show the names and residence addresses of the association's officers and trustees.

(7) If for license as either agent or solicitor, the application must also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended, or revoked; whether any insurer, general agent, or agent, in the case of a solicitor application, claims applicant to be indebted to it and, if so, the details thereof and the defenses, if any, of the applicant thereto; and whether applicant ever had an agency contract canceled and the facts thereof.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented, in the case of applicants for license as agent, or of the proposed employing agent, in the case of applicants for license as solicitor, as to whether the applicant is known

to such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence ~~and--whether--the applicant--will--use--the--license--principally--for--the--purpose--of--insuring--the--applicant's--own--risks--or--interests--and--those--of--the--applicant's--relatives--or--employer.~~

(9) All such applications must be accompanied by the applicable license fee, appointment of agent fee where applicable, and examination fee where required under 33-17-212, all in the respective amounts stated in 33-2-708."

Section 6. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required. (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to ~~a--personal--written~~ an examination as to his competence to act as such agent or solicitor. The commissioner may either conduct the examination or arrange for the examination to be conducted by a testing service, which shall recover the cost of the examination from the applicant.

(2) If the applicant is a firm partnership or

1 corporation, the examination shall be so taken by each
2 individual who is to be named in the license as having
3 authority to act for the applicant in its insurance
4 transactions under the license.

5 (3) Examination of an applicant for an agent's license
6 shall cover all of the kinds of insurance for which the
7 applicant has applied to be licensed, as constituted by any
8 one or more of the following classifications:

9 (a) life insurance;

10 (b) disability insurance;

11 (c) property insurance; for the purposes of this
12 provision, "marine" insurance shall be deemed to be included
13 in "property" insurance;

14 (d) casualty insurance;

15 (e) vehicle insurance;

16 (f) surety insurance;

17 (g) credit life and disability insurance;

18 (h) title insurance.

19 (4) Examination of an applicant for a solicitor's
20 license shall cover all the kinds of insurance, other than
21 life, as to which the appointing agent is licensed.

22 (5) This section shall not apply to, and no such
23 examination shall be required of:

24 (a) any individual lawfully licensed as an agent or
25 solicitor as to the kind or kinds of insurance to be

1 transacted as of or immediately prior to January 1, 1961,
2 and thereafter continuing to be so licensed;

3 (b) any applicant for license covering the same kind
4 or kinds of insurance as to which the applicant was licensed
5 in this state, other than under a temporary license, within
6 the 12 months next preceding date of application unless such
7 previous license was suspended, revoked, or continuation
8 thereof refused by the commissioner, except that the
9 provisions of this subsection (5)(b) do not apply to title
10 agents, as defined in 33-25-105;

11 (c) any applicant for license as nonresident agent,
12 subject to reciprocal arrangements as provided for in this
13 code;

14 (d) all applicants for license as agent for an insurer
15 that confines its business in this state substantially to
16 the insuring of the property, interests, and risks of
17 farmers, if exempted from examination by the commissioner,
18 in his discretion, upon written request of the insurer;

19 (e) transportation ticket agents of common carriers
20 applying for license to solicit and sell only:

21 (i) accident insurance ticket policies; or

22 (ii) insurance of personal effects while being carried
23 as baggage on such common carrier, as incidental to their
24 duties as such transportation ticket agents;

25 (f) agents' associations applying for license under

33-17-205;

{g} mechanical breakdown insurance agents."

Section 7. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at ~~a place~~ places in this state reasonably accessible to the applicants. ~~The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion but at least once a month.~~

(2) All the kinds of insurance or classes thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.

(3) The commissioner shall ~~give, conduct, and grade all examinations~~ assure that the examinations are conducted in a fair and impartial manner and without unfair discrimination as between individuals examined.

(4) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

(5) The examination of a title agent, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real

property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 8. Section 33-17-231, MCA, is amended to read:

"33-17-231. Appointment of agents -- continuation and termination. (1) Each insurer appointing an agent in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the agent for the insurer, and pay the fee therefor as stated in 33-2-708. The term of the appointment is for 1 year and runs from June 1 of each year through May 31 of the succeeding year.

(2) Subject to annual continuation renewal by the insurer ~~not later than May 31~~, each such appointment shall remain in effect until the agent's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer ~~or agent~~.

(3) Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose appointments in this state are to remain in effect, accompanied by payment of the annual renewal fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner a termination report of all agents whose

1 appointments in this state are not to remain in effect.

2 (4) Subject to the agent's contract rights, an insurer
3 may terminate an agency agent's appointment at any time. The
4 insurer shall promptly give written notice of such
5 termination to the commissioner and to the agent ~~where~~
6 ~~reasonably--possible~~. The commissioner may require of the
7 insurer reasonable proof that the insurer has given such
8 notice to the agent.

9 (5) As part of the notice of termination given the
10 commissioner, the insurer shall file with the commissioner a
11 statement of the facts relative to the termination and the
12 cause thereof. Any information or statement contained in the
13 notice of termination ~~shall be privileged and~~ shall not be
14 admissible as evidence in any action or proceeding against
15 the insurer or any representative thereof by or in behalf of
16 any person affected by such termination."

17 Section 9. Section 33-17-401, MCA, is amended to read:

18 "33-17-401. Nonresident agent -- reciprocity. The
19 commissioner may ~~license--as--an--agent~~ issue only a
20 nonresident license to a person, partnership, or corporation
21 otherwise qualified under this code but not a resident of
22 this state and only if pursuant to the laws of the state of
23 his residence a similar privilege is extended to persons
24 resident in Montana."

25 Section 10. Section 33-17-601, MCA, is amended to

1 read:

2 "33-17-601. Administrator defined. As used in this
3 part, the term "administrator" means any person,
4 corporation, partnership, or association who that collects
5 charges or premiums from residents of this state in
6 connection with life or health insurance coverage or
7 annuities or property or casualty insurance coverage or who
8 that adjusts or settles claims on such coverage, but does
9 not include:

10 (1) an employer on behalf of its employees or on
11 behalf of the employees of one or more subsidiary or
12 affiliated corporations of such employer;

13 (2) a union on behalf of its members;

14 (3) an insurance company which is either licensed in
15 this state or acting as an insurer with respect to a policy
16 lawfully issued and delivered by it in and pursuant to the
17 laws of a state in which the insurer was authorized to do an
18 insurance business or a health service corporation as
19 defined in 33-30-101;

20 (4) a life, or health, property, or casualty agent who
21 is licensed in this state and whose activities are limited
22 exclusively to the sale of insurance;

23 (5) a creditor on behalf of its debtors with respect
24 to insurance covering a debt between the creditor and its
25 debtors;

(6) a trust established in conformity with 29 U.S.C. 186, its trustees, or agents and employees acting thereunder;

(7) a trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, or employees acting thereunder;

(8) a custodian acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code or its agents and employees;

(9) a bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities;

(10) a credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims; or

(11) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney at--law and who does not collect charges or premiums in connection with life or health insurance coverage or annuities."

Section 11. Section 33-17-602, MCA, is amended to read:

"33-17-602. Written agreement required. (1) No person may act as an administrator without a written agreement

between the person and the insurer. The written agreement shall be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement shall contain provisions which include the requirements of 33-17-605--and 33-17-612 through 33-17-617 insofar as these requirements relate to the functions performed by the administrator.

(2) The agreement shall contain a provision with respect to the underwriting or other standards pertaining to the business underwritten by such insurer.

(3) Whenever a policy is issued to a trustee, a copy of the trust agreement and any amendments thereto shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter."

Section 12. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) Except as provided in 33-17-411, the commissioner may suspend for not more than 12 months or may revoke or refuse to continue any license issued under this chapter or any surplus ~~line~~ lines agent license if, after hearing held on not less than 20 10 days' advance notice by

1 ~~registered--or~~ certified mail of such hearing and of the
 2 charges against the licensee given as provided in
 3 33-1-314(3) to the licensee and to the insurers represented,
 4 as to an agent, or to the appointing agent, as to a
 5 solicitor, he finds that as to the licensee any one or more
 6 of the following causes exist:

7 (a) for any cause for which issuance of the license
 8 could have been refused had it then existed and been known
 9 to the commissioner;

10 (b) for obtaining or attempting to obtain any such
 11 license through misrepresentation or fraud;

12 (c) for violation of or noncompliance with any
 13 applicable provision of this code or for willful violation
 14 of any lawful rule or order of the commissioner;

15 (d) for misappropriation or conversion to his own use
 16 or illegal withholding of moneys or property belonging to
 17 policyholders, ~~or-insurer--or~~ insurers, beneficiaries, or
 18 others and received in conduct of business under the
 19 license;

20 (e) conviction, by final judgment, of a felony
 21 involving moral turpitude;

22 (f) if in the conduct of his affairs under the license
 23 the licensee has used fraudulent or dishonest practices or
 24 has shown himself to be incompetent, untrustworthy, or a
 25 source of injury and loss to the public.

1 (2) The license of a firm partnership or corporation
 2 may be suspended, revoked, or refused also for any of such
 3 causes as relate to any individual designated in the license
 4 to exercise its powers.

5 (3) The commissioner may suspend, revoke, or refuse to
 6 continue a license under subsection (1)(e) without
 7 conducting an investigation pursuant to 37-1-203 or making a
 8 written finding pursuant to 37-1-204."

9 Section 13. Section 33-17-1002, MCA, is amended to
 10 read:

11 "33-17-1002. Procedure following suspension or
 12 revocation. (1) Upon suspension or revocation of any such
 13 license, the commissioner shall forthwith notify the
 14 licensee thereof either in person or by mail addressed to
 15 the licensee at his address last of record with the
 16 commissioner. Notice by mail shall be deemed effectuated
 17 when so mailed. The commissioner shall give like notice to
 18 the insurers represented by the agent, in the case of an
 19 agent's license, and to the agent by whom appointed, in the
 20 case of a solicitor's license.

21 (2) Suspension or revocation of the license of an
 22 agent shall automatically revoke or suspend the licenses of
 23 all solicitors appointed by him.

24 (3) The commissioner shall not again issue a license
 25 under this code to or as to any person whose license has

been revoked until after expiration of 1 year and thereafter not until such person again qualifies therefor in accordance with the applicable provisions of this code. A person whose license has been revoked twice shall not again be eligible for any license under this code.

(4) If the license of a firm partnership or corporation is so suspended or revoked, no member of such firm partnership or officer or director of such corporation shall be licensed or be designated in any license to exercise the powers thereof during the period of such suspension or revocation unless the commissioner determines upon substantial evidence that such member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked."

Section 14. Section 33-17-1004, MCA, is amended to read:

"33-17-1004. Acting as insurance agent, solicitor, or adjuster without license -- penalty. Except as provided in 33-17-411, a person, firm partnership, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be fined \$500 or

imprisoned in the county jail for 90 days, or both."

Section 15. Section 33-17-1101, MCA, is amended to read:

"33-17-1101. Place of business -- display of license -- records. (1) Every resident agent shall have and maintain a place of business in this state accessible to the public. A nonresident agent may maintain a place of business in this state. Such An agent's place of business ~~shall~~ must be that wherein ~~the licensee~~ he principally conducts transactions under his license. The street address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner of any change thereof in his street or mailing address. Nothing in this section prohibits maintenance of such place of business in the licensee's place of residence.

(2) The license of the licensee and the license of each solicitor appointed by and representing the licensee ~~shall~~ must be conspicuously displayed in such place of business at the street address shown on the license in a part thereof customarily open to the public.

(3) The agent shall keep at his place of business complete records pertaining to transactions under his license and the licenses of his solicitors, for a period of at least 3 years after completion of the respective transactions, except that title agents, as defined in

1 33-25-105, shall retain records as provided in 33-25-214 and
2 33-25-216."

3 Section 16. Section 33-17-1102, MCA, is amended to
4 read:

5 "33-17-1102. Reporting and accounting for premiums.
6 (1) All premiums or return premiums received by an agent or
7 solicitor ~~shall-be-trust-funds-so-received-by--the~~ must be
8 held in a separate trust account. The licensee shall at all
9 times act in a fiduciary capacity, and the agent or
10 solicitor shall in the applicable regular course of business
11 account for and pay the same to the insured, insurer, or
12 agent entitled thereto. Except for a title agent as defined
13 in 33-25-105, ~~if-the-licensee-establishes-a-separate-deposit~~
14 ~~for--funds--so--belonging--to--others--in--order--to--avoid-a~~
15 ~~commingling-of-such-fiduciary-funds-with-his-own--funds--he~~
16 an agent may deposit and commingle in the same such separate
17 deposit all such funds belonging to others so long as the
18 amount of such deposit so held for each respective other
19 person is reasonably ascertainable from the records and
20 accounts of the licensee.

21 (2) Any agent or solicitor ~~who, not being lawfully~~
22 ~~entitled thereto,--diverts~~ may not divert or ~~appropriates~~
23 appropriate such funds or any portion thereof to his own use
24 ~~is, upon conviction, guilty of theft and shall be punished~~
25 ~~as provided by law."~~

1 Section 17. Section 33-17-1103, MCA, is amended to
2 read:

3 "33-17-1103. Exchange of business -- sharing
4 commissions. (1) An agent may, ~~occasionally-only~~ under rules
5 adopted by the commissioner, place an insurance coverage
6 with an insurer as to which he is not then licensed or
7 appointed as an agent, and the insurer shall accept such
8 business, only when placed through an agent, licensed under
9 this chapter and appointed by the insurer. Both agents
10 involved in such an exchange of business must be licensed as
11 to all of the kinds of insurance represented by the coverage
12 so placed.

13 (2) The agents involved in a lawful exchange of
14 business under subsection (1) above may divide between them
15 the commission or compensation payable on account of such
16 coverage.

17 (3) No agent or solicitor shall directly or indirectly
18 share his commissions or other compensation received or to
19 be received by him on account of a transaction under his
20 license with any person not also licensed under this chapter
21 as to the same kind or kinds of insurance involved in such
22 transactions, except as provided in 33-17-1113. This
23 provision shall not affect payment of the regular salaries
24 due employees of the licensee or the distribution in regular
25 course of business of compensation and profits among members

or stockholders if the licensee is a firm or corporation or use of funds for family or personal purposes.

(4) This section does not apply as to those transactions with surplus lines agents which are lawful under 33-2-306 or as to life or disability insurance placed as provided in 33-17-1104."

Section 18. Section 33-17-1104, MCA, is amended to read:

"33-17-1104. Life or disability agent authorized to place excess or rejected business. A life or disability insurance agent may, from time to time under rules adopted by the commissioner, place excess or rejected risks in any other life or disability insurer authorized to transact insurance in this state, with the knowledge and approval of the insurer or insurers as to which the agent is so licensed, and may receive a commission thereon without being required to have a license as to such other insurer."

NEW SECTION. Section 19. Bond requirement -- waiver for nonresident agent. (1) Prior to the issuance of an insurance agent license, the applicant shall file with the commissioner and thereafter, for as long as the license remains in effect, shall keep in force a bond in favor of this state in the amount of \$10,000 with authorized corporate sureties approved by the commissioner. The aggregate liability of the surety for claims on a bond may

not exceed the amount of the bond. The bond shall be conditioned that the agent shall conduct business under the license in accordance with this code. The bond may not terminate unless the surety gives the licensee and the commissioner at least 30 days' prior written notice. The commissioner shall notify the surety, within 10 working days, of termination of the license for which the bond was in effect.

(2) The commissioner may not require a nonresident insurance agent to file and keep a new bond if the commissioner is satisfied that an existing bond covers the nonresident insurance agent's business in this state.

NEW SECTION. Section 20. Repealer. Sections 33-17-203 and 33-17-605, MCA, are repealed.

NEW SECTION. Section 21. Extension of authority. Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 22. Codification instruction. Section 19 is intended to be codified as an integral part of Title 33, chapter 17, part 1, and the provisions of Title 33, chapter 17, part 1, apply to section 19.

NEW SECTION. Section 23. Applicability. Section 19 applies to agent licenses issued or renewed after May 31, 1988.

-End-

-28-

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
801	2/18/87	2/19/87	tabled 2/19/87								
802	2/18/87	2/19/87	tabled 2/19/87								
803	2/18/87	2/19/87	2/19/87			2/19/87					
806	2/18/87	2/19/87	2/19/87	2/19/87							
810	2/19/87	2/20/87	2/24/87			2/24/87					
817	3/18/87	2/19/87	2/19/87			2/19/87					
823	2/19/87	2/20/87	2/20/87	2/20/87							
828	2/19/87	2/20/87	tabled 2/20/87								
832	3/9/87	3/16/87	tabled 3/19/87								
847	2/23/87	2/24/87	tabled 2/24/87								
853	3/3/87	3/19/87	tabled 3/20/87								
854	3/3/87	3/19/87	3/20/87	3/20/87							
855	3/3/87	3/19/87	3/20/87	3/20/87							
856	3/3/87	3/19/87	tabled 3/20/87								

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

Rep. Glaser moved that House Joint Resolution No. 32 DO PASS AS AMENDED. The motion carried unanimously.

HOUSE BILL NO. 803 - Revise Insurance Agents Licensing Laws, sponsored by Rep. Bud Campbell, House District 48, Deer Lodge. Rep. Campbell stated this was a license bill, and the intent of the bill was not to alter existing statutes but to streamline the process.

PROPOSERS

Robert Throssell, Chief Legal Counsel, State Auditor's Office. Mr. Throssell stated that the purpose of the bill was to streamline insurance agents' licensing procedures as administered by the Insurance Commissioner's office. He submitted written testimony. Exhibit No. 1.

Roger McGlenn, Executive Director, Independent Insurance Agents Association. Mr. McGlenn stated the Association has concerns with the bonding requirements. He said it appears to be a cash guarantee bond, but in checking with several bonding companies, it has been estimated there will be an annual minimum premium per licensed agent of \$100. He said clarification of multiple licenses was needed, if an agent would be required to have a bond for each one of those licenses. He commented the additional financial expense would be a burden to agents to purchase these bonds. He said the agents would like to find a more equitable method to protect the consumer and not unnecessarily burden the agent financially to purchase these bonds.

OPPOSERS

None.

QUESTIONS

Rep. Simon asked Mr. Throssell to explain the section that repeals the general qualifications of life or disability insurance agents. Mr. Throssell responded the general qualifications have been consolidated within one section. He said the bonding requirement is a new bonding requirement on agents.

Rep. Brandewie commented that it was difficult to obtain bonds. Mr. Throssell replied that the Insurance Department recognizes the concerns about the bonding requirement and the proposal was a way of having a certain amount of self regulation by the insurance industry of its people. He said that it is the recommendation of the Department that some financial guarantee be in place for the protection of the consumers.

Rep. Thomas asked Mr. Throssell to comment on the problems that led to requiring such a bond. Mr. Throssell said that the Department faces the situation where an agent absconds with someone's money. He said this is infrequent but does occur.

CLOSING

Rep. Campbell made no further comments.

HOUSE BILL NO. 799 - Regulate Preferred Provider Arrangements, sponsored by Rep. Earl Lory, House District 59, Missoula. Rep. Lory stated this bill was at the request of the State Auditor and Insurance Commissioner, and was referred to as the Preferred Provider Arrangement Act. He said this allows an insurer that offers group insurance to negotiate a contract with licensed health care providers to furnish that service at a reduced rate or arrange for a set fee for health care providers. He said the preferred provider is an insurer that enters into a contract with the provider and gives that to the group insurance, and the provider can be any health care agency, hospital, group of doctors, or any licensed health care provider.

PROPONENTS

None.

OPPONENTS

Steve Waldron, representing community mental health centers. Mr. Waldron commented that with this bill there is the possibility of inappropriate arrangements made to provide services, and impose penalties for not utilizing a specific provider. He said another possibility for inappropriate dealings that could exist is that the insurer could individually contract with one provider and require that the insured individuals go to that particular provider.

Ann Scott, Administrator, Rocky Mountain Treatment Center, Great Falls. Ms. Scott stated that the concerns in the mental health and chemical dependency treatment areas are that it would take away freedom of choice for the consumer. She commented that people that go to treatment for chemical dependency often go to centers out of town or possibly out of state, sometimes for the amenity that they require to make them more comfortable in seeking treatment. She said the bill may actually decrease the number of people seeking treatment when they really need it.

He said that the problem with the preferred provider is the group raises the deductible which increases the cost to the person who is insured.

Rep. Grinde moved a substitute motion that House Bill No. 799 BE TABLED. The motion carried with Reps. Cohen and Thomas opposed.

ACTION ON HOUSE BILL NO. 803

Rep. Thomas moved that House Bill No. 803 DO PASS.

Rep. Thomas moved the amendment to strike the new section on page 27 regarding the bond requirements, beginning on line 18. He said this is excessive and there is no proof that it is needed. The motion carried unanimously.

Rep. Brandewie said he agreed with Rep. Thomas, and that bonds were getting impossible to acquire.

Rep. Thomas moved the statement of intent. The motion carried unanimously.

Rep. Thomas moved that House Bill No. 803 DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 417

Rep. Brown moved that House Bill No. 417 DO PASS.

Rep. Brown moved the amendments. The motion carried unanimously. See Standing Committee Report.

Rep. Brown moved that House Bill No. 417 DO PASS AS AMENDED. The motion carried unanimously.

Rep. Brandewie moved the statement of intent. The motion carried unanimously.

ADJOURNMENT

The meeting was adjourned at 11:30 a.m.



REP. LES KITSELMAN, Chairman

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

STANDING COMMITTEE REPORT

February 19

19 37

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 803

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☒ statement of intent attached

REP. LES KITSSELMAN

Chairman

AMENDMENTS AS FOLLOWS:

- 1) Title, lines 12 and 13
Following: "MCA" on line 12
Strike: the remainder of line 12 and line 13
through "DATE"
- 2) Page 27, line 18, through page 28, line 12
Following: line 17 on page 27
Strike: section 19 in its entirety
Renumber: subsequent sections
- 3) Page 28, lines 19 through 25
Following: line 13
Strike: sections 22 and 23 in their entirety

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STATEMENT OF INTENT

A statement of intent is required for this bill because section 15 authorizes the commissioner of insurance of the state of Montana (commissioner) to determine by rule the instances in which an insurance agent may place insurance coverage with an insurer as to which he is not then licensed or appointed as an agent and because section 16 authorizes the commissioner to determine the instances in which a life or disability insurance agent may place excess or rejected risks in an insurer that has not appointed him as agent. The legislature intends that the rules that the commissioner adopts to implement this bill be designed to protect Montana life and disability insurance consumers.

The legislature further intends that the commissioner adopt those rules in accordance with 33-1-313, which grants the commissioner general rulemaking authority and which permits the commissioner:

(1) to make only reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of those laws; and

(2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703.

LC 1096

HOUSE BILL NO. 803

REVISION OF AGENTS LICENSING

The purpose of this bill is to correct problems the State Auditor has identified in the Insurance Agent's Licensing Chapter of the Insurance Code. The bill does not change the requirements to obtain a license as an insurance agent, solicitor, consultant or adjuster. The bill contains clarification of terms and procedures which have come into question over the past two years. The purpose of these clarifications is not to alter the intent or the application of the licensing statutes by the State Auditor's Office. The clarifications are designed to eliminate ambiguities and to streamline the licensing process.

Section one of HB 803 amends the definition portion of the agents' licensing chapter by adding the definition of a consultant. The definition is not a new description of consultant activities but rather a concise statement of the term. The other substantive change in this section substitutes the word partnership for the word firm. Firm is not a legally accepted or defined word in the Montana Code. Partnership is the correct legal term. The remaining changes deal with format and style. As long as the statute is being amended, the stylistic changes adopted by the Code Commissioner are being incorporated.

Section two of the HB 803 amends Section 33-17-201, MCA. The first change is the inclusion of the word validated before the word appointment. Before an agent may begin to sell insurance, an admitted insurance company must appoint him as an agent. What frequently happens is that the company will notify the agent of the appointment well in advance of notifying the Insurance Commissioner. The agent believes he can start selling when in fact the papers formally appointing him have yet to be filed with the Department. Until the agent is on record as having been appointed, the company is not responsible for his actions. If an agent does something wrong, the insurance company could deny having appointed him. The formal appointment is one of the strongest safeguards for the consumer.

Sections 3 and 4 of the HB 803 provide for one uniform section on the general qualifications of agents and solicitors. Sections 3 and 4 combine Sections 33-17-202, MCA, on general qualifications for agents and 33-17-203, MCA, on general qualifications for life and disability insurance agents. The purpose is to have one uniform section for the licensing of all agents and solicitors. More detailed provisions relating to the specific types of insurance being sold by the licensee are included elsewhere in the code.

Section three of the HB 803, eliminates the requirement that anyone having an insurance agent's license must actively solicit or negotiate the sale of insurance to the general public. Currently the law limits the percentage of business an insurance agent may conduct with his immediate family. The proposed changes eliminates the Insurance Commissioner's responsibility for policing these types of transactions. An agent is appointed by a company to represent that company. If the company believes it is unwise to accept someone's business for sound insurance reasons, it is up to that company to reject the business.

Section 5 of HB 803 amends Section 33-17-204, MCA. First, the amendment clarifies the licensing of a partnership or corporation as an insurance agency. The current wording of the statute makes it permissible for a partnership or corporation to be licensed. The amendment will require them to be licensed if they wish to sell insurance. The purpose is obvious. Anyone selling a insurance, be it an individual or a business, should have a license. The bill also adds a requirement that the business entity be properly registered with the Secretary of State. This requirement will assist both offices in assuring businesses have met all the statutory obligations.

Sections 6, 7, and 8 of HB 803 amend Sections 33-17-211, 33-17-212 and 33-17-213, MCA, to change the way the insurance agent's examinations are given. Agents will still be required to pass a licensing exam on the type of insurance they intend to sell. The changes in these sections are to give the Commissioner of Insurance the flexibility to contract with private testing service. After reviewing the testing system that has been in place for many years, the Commissioner believes that there are better alternatives to having the Department develop, administer and grade the examinations.

The Commissioner is concerned that the tests are fair. Fairness includes a test that is well written, covers current topics of insurance, and is administered in a workable fashion. The Insurance Commissioner retains the right to determine the contents of the test, its difficulty and the passing score. The testing service will assist the Department in developing the questions and administering the test. By utilizing a testing service, the examinations can be updated in a more timely fashion and will not be tied to one study manual or system.

Currently the tests are given weekly in Helena and every other week in Billings. A private testing service would have the resources to give the tests more frequently and in more locations throughout the state. A private testing service would be able to promptly provide the applicant with his test results. The cost of taking the test would be paid by the applicant directly to the testing service. It is fully anticipated that the cost of taking the test will increase. But it is the firm belief of the Insurance Commissioner that improved accessibility of testing sites, the better quality of the tests and the prompt issuance of the results will more than offset the additional expense.

Section 9 of HB 803 amends Section 33-17-231, MCA. The specific term of a license has never been clearly established in the statute. The term that is specified, June 1 of each year through May 31 of the next, is the term currently enforced. It was arrived at by working through the various dates previously used in the law. This change states the term of the license so there can be no confusion.

Section 10 of HB 803 amends Section 33-17-401, MCA, to mandate the issuance of a non resident license. The state of Montana cannot deny out of state residents the opportunity to engage in business in this state. It can however enact laws placing reasonable requirements on those wishing to come into Montana and sell insurance. By requiring that a non resident license be obtained, out of state people must meet the same requirements as residents to sell insurance. The same laws apply and the same sanctions are in place in the event of violations.

Section 11 of HB 803 includes in the definition of Administrator the servicing of property and casualty insurance coverage. This change is necessitated by the changes taking place in the insurance industry. An administrator is someone who for a fee takes over and handles the day to day contacts with the insureds on behalf of a company or insurance arrangement. This same trend is developing in the property and casualty side of the insurance industry. The amendment to 33-17-601 simply expands the definition to apply the same rules to those administering property and casualty programs.

Section 12 of HB 803 amending Section 33-17-1001, MCA, is requested to address a situation that the State Auditor's Office encountered in one of its recent actions against an insurance agent. The matter is on appeal before the Supreme Court at the present time. The agent in question, was convicted of a felony. This conviction allows the Insurance

Commissioner to suspend or revoke the agent's license. The agent, however, has put forth the argument that the provisions of Title 37, Chapter 1, Part 2, MCA, on the licensing of people convicted of crimes overrides the Commissioner's authority to suspend or revoke based on the conviction.

The changes requested by the Insurance Commissioner will permit her to suspend, revoke or refuse to continue a license of anyone convicted of a felony involving moral turpitude without the investigations and findings contemplated in Title 37. The provisions of Title 37, Chapter 1, Part 2 will apply if someone who has had their license suspended or revoked for a felony reapplies. This change will allow the Commissioner to quickly take action against an agent who has been convicted of a felony and prevent them from continuing to sell insurance. The person will not be denied a license indefinitely unless the crime warrants it and they are given a hearing on the matter.

Section 16 of HB 803, amends Section 33-17-1101, MCA. A non-resident agent cannot be prohibited from maintaining an office in this state. The state of Montana cannot place unreasonable restrictions on commerce. If a person qualifies for a non-resident agent's license, they have met the same qualifications as a resident agent. The same laws apply to them in the operation of their insurance business.

Section 17 of HB 803 amends Section 33-17-1102, MCA. This section provides that all agents must maintain a separate trust account for the monies they receive from their clients. It provides that there can be no commingling of the insurance agent's own business accounts and the monies being held on behalf of clients. The trust account requirement is a step to assure that insurance agents properly account for the monies given them by clients. There is no guarantee, of course, that an agent who intends to defraud or take money from a client will be prevented from doing so even with the trust account requirement. The trust account will hopefully provide an accounting record and trail which will be easier to follow in the event that an agent does defraud his clients.

Sections 17 and 18 of HB 803 amend Sections 33-17-1103 and 1104, MCA. These two sections of law are in place to allow agents to seek coverage for clients with companies they are not appointed to represent. The statutes deal with the two general types of insurance, life and health and property and casualty. They are worded differently to reflect the way the two categories of insurance are offered in the market. The change is to allow the commissioner rule making authority to control the sharing of commissions and placing of coverage in the

excess or rejected markets. The Insurance Commissioner has identified these two areas as ones having a potential danger to consumers. Most agents use the exceptions as they are intended to assist clients. Without any controls however, the statutes as worded can be used to circumvent the statutory protection consumers now enjoy.

Section 19 of HB 803 establishes a bond requirement for insurance agents. This bond requirement makes an agent show financial responsibility before being issued a license. This bond is for the state to be able to recover from an agent who violates the law the fines and restitution payments that may be levied. This is a new requirement in Montana law. It is a requirement that the state of North Dakota and the National Association of Insurance Commissioners have adopted. Again it is no guaranty that an agent will act in a responsible fashion. It does provide some safety for the public in the event an agent acts improperly. The proceeds of the bond will be available to cover losses incurred by the consumer. The bond requirement would apply to every person, either as an individual or as an agent appointed under an agency license.

The purpose for these amendments is to clarify some of the existing procedural problems in licensing insurance agents. The changes are also designed to provide the Insurance Commissioner with the authority to explore alternatives to the current examination procedure. Finally, the amendments statutes are necessary to correct problems that the department has identified in the last several years. Ultimately the aim of any changes in the agents licensing is to provide a uniform and fair licensing system which will protect the consumers of this state and provide for reasonable regulation of insurance agents.

BUSINESS AND LABOR

BILL NO. House Bill No. 803

SPONSOR Rep. Bud Campbell

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

CS-33

CHAIRMAN--SEN. ALLEN C. KOLSTAD
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY--CAROLYN LINDEN

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0771	2/23	3/17	3/17/87	CONCUR AS AMENDED		3/17/87
GLASER, BILL			REVISE SURPLUS LINES INSURANCE LAWS			
HB0796	3/02				STATE ADMIN.	
DRISCOLL, JERRY			LIMITING HOURS OF PLAY AND NUMBERS OF BINGO MACHINES; CAPPING LICENSE FEES			
HB0803	3/02	3/09	3/9/87; 3/10/87	CONCUR		3/10/87
CAMPBELL, BUD			REVISE INSURANCE AGENTS LICENSING LAWS			
HB0806	3/02	3/09	3/9/87; 3/10/87	CONCUR AS AMENDED	BUSINESS & LABOR	3/10/87
PAVLOVICH, BOB			REVISING MONTANA LIFE AND HEALTH GUARANTY ACT			
HB0806	3/17	3/18	3/18/87; 3/23/87; 3/26/87	CONCUR AS AMENDED		3/26/87
PAVLOVICH, BOB			REVISING MONTANA LIFE AND HEALTH GUARANTY ACT			
HB0817	3/13	3/20	3/20/87; 3/27/87	CONCUR		3/27/87
GLASER, BILL			INDEPENDENT LIABILITY FUNDS FOR SMALL BUSINESS			
HB0823	3/02	3/12	3/12/83; 3/16/87	CONCUR AS AMENDED		3/16/87
SQUIRES, CAROLYN			REVISE LAWS RELATING TO DISABILITY INSURANCE			
HB0849	4/03	4/09	4/9/87	CONCUR		4/9/87
QUILICI, JOE			FUNDING FOR MONTANA STATEHOOD CENTENNIAL OFFICE			
HB0862	4/03	4/08	HEARING CANCELED		FINANCE & CLAIMS	
WINSLOW, CAL			MONTANA PROGRESSIVE DEVELOPMENT ACT			
HB0863	3/25	3/31	3/31/87; 4/8/87; 4/9/87	CONCUR AS AMENDED		4/8/87
WALLIN, NORM			NET INCOME TAX ON VIDEO POKER AND KENO MACHINES			
HB0905	4/03	4/08	4/8/87; 4/9/87	TABLED		TABLED 4/9/87
WINSLOW, CAL			PROMOTE ECONOMIC DEVELOPMENT THROUGH INVESTMENT IN NEW TECHNOLOGY			

There being no further questions, Rep. Thomas closed on HB 240, and asked Mr. Robischon to respond on the #7 and #8 question and the fraud question.

Mr. Robischon said he would pass on #7 and #8 as he believed Mr. Gray had accurately explained those sections. He asked the committee to refer to the proposal by Mr. Hoyt referring to fraud on line 18, page 5. This provision specifically reserves to the insured his right to bring an action for fraud. Fraud, in the contract sense, which is what this is as it is a contractual relationship between the insured and the insurer - fraud includes not only the actual fraud but implied fraud which is a lesser degree of fraud and is defined in the contract law already. He said he was not aware of any definition in any statutes or in any of the cases in Montana of attempted fraud. He believed that attempted fraud is covered by the law of implied fraud and that cause of action is reserved to the insured under this statute.

In closing further, Rep. Thomas stated that litigation of bad faith is too lucrative to refer a case to the auditor and ask that office to please punish the company. He said that increasing the fine would definitely increase the use of the Unfair Claims Practices Act and felt that \$5,000 was not too high and \$25,000 would get more attention. He said the bill defines the rules of the game and makes them far more fair and equitable than they are now. He felt the bill is fair and equal and would not carry the bill if he did not think so. Any client should be treated as fairly, as honestly and as equally as they should be.

The hearing was closed on HB 240.

CONSIDERATION OF HOUSE BILL NO. 803: Rep. Bud Campbell, House District 48, chief sponsor, said the bill cuts through the red tape and streamlines the licensing procedures for the insurance industry. It generally revises certain provisions of the insurance laws relating to licensing and regulation of agents, solicitors, adjusters, consultants, and administrators. Section 1 contains a definition of "consultant."

Chairman Kolstad stated that he was confused with the Statement of Intent that was with the bill. Rep. Campbell said the wrong Statement was attached to the bill in the House. He thought Ms. Irigoin would clear up the Statement of Intent problem.

PROPONENTS: Kathy Irigoin, representing the State Auditor and Commissioner of Insurance, said that the bill is to clear up some of the irregularities in the agent licensing law. She submitted her written testimony. (EXHIBIT 2) Following her testimony she explained the Statement of Intent. (EXHIBIT 3) The House of Representatives struck the Statement of Intent on 3rd Reading under the impression that it was the wrong Statement. She felt they thought it was the wrong one as the Statement refers to sections 15 and 16 as giving the commissioner rulemaking

authority when it should have referred to sections 17 and 18. Also, the original Statement did not refer to section 2 as providing rulemaking authority even though it does so. The Auditor's office asks this committee to adopt the corrected version of the Statement of Intent for HB 803. (See EXHIBIT 3)

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, said they wished to be on record in support of the bill as necessary to improve the paper blizzard that exists in the Montana licensing laws as they exist in the statutes today. He said they had worked with the insurance department on the bill since December; they were aware it was coming out and they were concerned as it directly affects them. They were working with the insurance department on some technical and administrative questions and were convinced that these can be cleared up through the department's assistance in their rulings. They asked for a do pass recommendation as it was amended in the House.

Sen. Neuman assumed the Chair in Chairman Kolstad's absence.

DISCUSSION OF HOUSE BILL NO. 803: Sen. Neuman asked Ms. Irigoin about requiring the separate trust account - has that been a problem? Ms. Irigoin deferred to Mr. McGlenn.

Mr. McGlenn stated that this would simply require that a separate trust account be maintained. Many of their members, before this bill, had maintained a separate trust account; others had not but still maintained that fiduciary responsibility. He said there has been cases where the agent has not paid the accounts current, etc. The separate trust account does raise some questions as far as how agents are expected to comply with it; in some cases, company service is running 90-100 days after the renewal or issuance date. It is a rare occurrence, he said, that an agent is unethical, but it has happened. The agents have pledged to work with the department on how the agents should comply with the law.

Sen. Neuman asked about the section where the commissioner is able to suspend or revoke or refuse to continue a license without conducting an investigation. Mr. McGlenn said he believed the committee heard one bill dealing with the automatic stay and also a cease and desist bill and they were convinced due process still would exist under the law. These laws that are referred to are part of the insurance code.

There being no further questions from the committee, Rep. Campbell closed on HB 803.

Chairman Kolstad resumed the Chair.

Business & Industry COMMITTEE
50th LEGISLATIVE SESSION -- 1987

Date 3/9/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS			✓

Each day attach to minutes.

5/9/87

Business & Industry

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

WRITTEN TESTIMONY OF STATE AUDITOR'S OFFICE
HOUSE BILL 803
March 9, 1987

I. Purpose/Background

The purpose of House Bill 803 is to eliminate minor irregularities in the agent licensing chapter of the Montana Insurance Code. Also, House Bill 803 permits the Montana Insurance Department to use a testing service to administer agent licensing examinations (page 12, lines 21 through 24; and page 15, lines 15 through 18). Present law requires that agent licensing examinations be given in Helena. If the Insurance Department could use a testing service, those examinations could be administered where other national examinations like the ACT examination are given. An applicant for an agent license could then take the agent licensing examination in a town closer to home than Helena is.

II. Section by Section Explanation

Section 1 contains definitions. A definition for "consultant" has been added (page 2, lines 20 through 24). Throughout House Bill 803, the word "firm", which is vague, has been replaced with the word "partnership".

Section 2 permits the Commissioner of Insurance to prescribe the insurance agent application form by rule (page 4, line 7; and page 5, line 21).

The purpose of Section 3 is to combine the qualifications for any kind of insurance agent into one statute (page 6, line 15 through line 23, page 8). Presently, the qualifications for a property and casualty insurance agent are listed in one statute, while the qualifications for a life and disability insurance agent are listed in another. The qualifications for both kinds of agents are the same except that a life and disability agent has an additional qualification--he or she cannot be a funeral director, undertaker, or mortician (page 8, lines 7 through 12). Since section 3 combines the qualifications for all insurance agents into one statute, the present statute listing the qualifications for a life and disability insurance agent is repealed (page 28, lines 13 through 14).

Section 4 clarifies that a partnership or corporation acting as an insurance agent in this state must be licensed as an insurance agent (page 9, lines 1 through 3). It also clarifies that any individual selling insurance on behalf of a partnership or corporation must be licensed in conjunction with the partnership or corporation license (page 9, lines 3 through 12). Also, the Commissioner of Insurance may not issue a

license to a partnership or corporation unless the Secretary of State has issued is a valid certificate (page 9, lines 20 through 23).

There are only minor changes to section 5 (page 9, line 24 through line 13, page 12).

Section 6 provides that the Commissioner of Insurance may either conduct the insurance agent licensing examination or arrange for a testing service to conduct it (page 12, lines 21 through 24).

Section 7 removes the requirement that agent licensing examinations be given at the office of the Commissioner of Insurance in Helena, permitting examinations to be conducted at places reasonably accessible to the applicant (page 15, lines 4 through 10).

Section 8 clarifies that an agent appointment runs from June 1 of each year through May 31 of the next year (page 16, lines 10 through 12).

Section 9 clarifies that a nonresident agent may get only a nonresident agent license (page 17, lines 19 through 24).

Section 10 permits an individual to be licensed as a property and casualty administrator (page 18, lines 7 and 20). Presently, an individual may be licensed only as a life and health administrator.

The reference to 33-17-605 is deleted in section 11 because House Bill 803 repeals 33-17-605 (administrator's bond to insurer) (page 28, lines 13 through 14).

Section 12 provides 10 days' advance notice of a hearing to suspend or revoke an insurance agent license (page 20, line 25). It also provides that, if an agent is convicted of a felony, the Commissioner of Insurance may revoke or suspend an agent's license without conducting a special investigation or making a special written finding (page 22, lines 5 through 8).

The only changes in Sections 13 (page 22, line 9 through line 15, page 23) and 14 (page 23, line 16 through line 1, page 24) are that "firm" is replaced with "partnership".

Section 15 provides that a resident insurance agent must have an office in Montana; whereas, a nonresident insurance agent may have one (page 24, lines 5 through 8).

Section 16 requires every agent and solicitor to maintain all premiums he or she receives in a separate trust account. It also requires an agent or solicitor to always act in a fiduciary capacity (page 25, lines 6 through 20).

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 3-9-87

BILL NO. H.B. 803

Section 17 permits the Commissioner of Insurance to adopt rules clarifying when a property or casualty insurance agent may place insurance with an insurer that has not appointed him or her as its agent (page 26, lines 4 through 12).

Section 18 permits the Commissioner of Insurance to adopt rules clarifying when a life or disability insurance agent may place excess or rejected risks with an insurer that has not appointed him or her as its agent (page 27, lines 10 through 17).

III. Amendments

On third reading, the House of Representatives struck the statement of intent that accompanied House Bill 803. A statement of intent is required for House Bill 803, however, because sections 17 and 18 authorize the commissioner to adopt rules to determine when an insurance agent may place insurance with an insurer that has not appointed him or her as its agent (page 26, lines 4 through 12; and page 27, lines 10 through 17).

The original statement of intent incorrectly referred to sections 15 and 16 as providing the Commissioner of Insurance rulemaking authority when it should have referred to sections 17 and 18. Also, the original statement of intent did not refer to section 2 as providing rulemaking authority even though it does. The State Auditor asks this committee to adopt the corrected version of the statement of intent for House Bill 803.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 3-9-87

BILL NO. H.B. 803

STATEMENT OF INTENT PROPOSED BY STATE AUDITOR
SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 3-9-87

BILL NO. HB 803

HB 0803/si

50th Legislature

STATEMENT OF INTENT

HB BILL NO. 803

Senate Business and Industry Committee

A statement of intent is required for this bill because section 17 authorizes the commissioner of insurance of the state of Montana (commissioner) to determine by rule the instances in which a property and casualty insurance agent may place insurance coverage with an insurer as to which he is not then licensed or appointed as an agent and because section 18 authorizes the commissioner to determine the instances in which a life or disability insurance agent may place excess or rejected risks in an insurer that has not appointed him as agent. In addition, section 2 authorizes the commissioner to prescribe by the forms required in connection with an application for an insurance agent license. The Legislature intends that the rules, which the commissioner adopts to implement this bill, be designed to protect Montana insurance consumers.

The Legislature further intends that the commissioner adopt those rules in accordance with 33-1-313, MCA, which grants the commissioner general rule-making authority and which permits the commissioner:

(1) to make only reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of those laws; and

(2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703, MCA.

SENATE BUSINESS & INDUSTF

EXHIBIT NO. 3

DATE 3-9-87

BILL NO. H.B. 803

DISCUSSION OF HOUSE BILL NO. 401: There were no questions regarding the bill.

EXECUTIVE ACTION ON HOUSE BILL NO. 401:

Sen. Darryl Meyer moved that House Bill 401 BE CONCURRED IN. Sen. Walker Seconded the MOTION and it PASSED UNANIMOUSLY.

DISCUSSION OF HOUSE BILL NO. 240: Sen. Meyer presented proposed amendments to HB 240 at the request of Mr. Carl England. Ms. McCue explained that all of the amendments were on page five and have to do with which of those provisions of 33-18-201, if violated by the insurer, would cause you to have an independent cause of action. The amendments would add subsections seven and eight. Chairman Kolstad asked Mr. John Hoyt if he supported the proposed amendments and he answered affirmatively. Sen. Neuman stated that he was not in agreement with them and now felt that if subsections seven and eight were included everything would be back to its original form before the bill. Sen. Williams asked if Rep. Thomas was aware of the proposed amendments and Mr. Hoyt said he didn't know. Chairman Kolstad stated that the committee would hold the bill for further study. (EXHIBIT 5)

DISPOSITION OF HOUSE BILL NO. 806: Sen. Mike Walker MOVED that House Bill 806 BE AMENDED. The MOTION was Seconded by Sen. Darryl Meyer and PASSED UNANIMOUSLY.

A MOTION by Sen. Darryl Meyer that House Bill 806 BE CONCURRED IN AS AMENDED was Seconded by Sen. Mike Walker. It PASSED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL NO. 803: Sen. Mike Walker MOVED that the STATEMENT OF INTENT BE ADOPTED. The MOTION was Seconded by Sen. Harry McLane. It PASSED UNANIMOUSLY.

A MOTION by Sen. McLane, Seconded by Sen. Walker that House Bill 803 BE CONCURRED IN PASSED with Sen. Neuman voting "no".

Chairman Kolstad announced that House Bill 417 would be held in the committee until further research and study was completed on the bill.

Business & Industry COMMITTEE
50th LEGISLATIVE SESSION -- 1987

Date 3/10/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 10 19 67

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 303

Third reading copy (blue)
color

REVISE INSURANCE AGENTS LICENSING LAWS

CAMPBELL (THAYER)

Respectfully report as follows: That HOUSE BILL No. 303

BE CONCURRED IN

STATEMENT OF INTENT ADOPTED AND ATTACHED

OD:PASSX

DO:NOT:PASSX

ALLEN C. KOLSTAD,

Chairman.

March 10, 1987

MR. PRESIDENT:

WE, YOUR COMMITTEE ON BUSINESS & INDUSTRY HAVING HAD
UNDER CONSIDERATION HOUSE BILL NO. 803, ATTACH THE
FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

HB No. 803

(1) A statement of intent is required for this bill
because:

(a) section 17 authorizes the commissioner of insurance
to determine by rule the instances in which a property and
casualty insurance agent may place insurance coverage with an
insurer as to which he is not then licensed or appointed as
an agent;

(b) section 18 authorizes the commissioner to determine
the instances in which a life or disability insurance agent
may place excess or rejected risks in an insurer who has not
appointed him as agent; and

(c) section 2 authorizes the commissioner to prescribe by
rule and make available the forms required in connection with
an application for an insurance agent license.

(2) The legislature intends that the rules that the
commissioner adopts to implement this bill be designed to
protect Montana insurance consumers.

(3) The legislature further intends that the commissioner
adopt those rules in accordance with 33-1-313, which grants
the commissioner general rulemaking authority and which permits
the commissioner:

(a) to make only reasonable rules that do not extend,
modify, or conflict with any law of this state or with any
reasonable implication of those laws; and

(b) to make or amend those rules only after a hearing of
which notice has been given as required by 33-1-703.